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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JAN 23 2005

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of	)	EB Docket No. 02-21
	)	
<b>Peninsula Communications, Inc.</b>	)	
	)	
Licensee of stations	)	File No. EB 01-IH-0609
KGTL, Homer, Alaska;	)	FRN: 0001-5712-15
KXBA(FM), Nikiski, Alaska;	)	Facility ID Nos. 52152
KWVV-FM, Homer, Alaska; and	)	86717
KPEN-FM, Soldotna, Alaska.	)	52145
	)	52149
	)	
Licensee of FM translator stations	)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska	)	52158 and 52160
	)	
Appellant licensee of FM translator stations	)	
K285EF, Kenai, Alaska;	)	52161
K283AB, Kenai/Soldotna, Alaska;	)	52155
K257DB, Anchor Point, Alaska;	)	52162
K265CK, Kachemak City, Alaska;	)	52154
K272CN, Homer, Alaska; and	)	52148
K274AB and K285AA, Kodiak, Alaska	)	52151 and 52164

To: Chief Administrative Law Judge  
Richard L. Sippel

**REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**OF**

**PENINSULA COMMUNICATIONS, INC.**

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January 23, 2003

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## **Table of Contents**

<u>Topic</u>	<u>Page #</u>
Summary	ii
I. Preliminary Statement	1
II. Background	2
III. The E.B.s' Findings of Fact and Conclusions of Law	4
A. Truthfulness	4
B. Reliability	5
C. PCI's Character Qualifications to be a Commission Licensee	7
D. PCI's "Willfulness"	10
IV. FCC Legal Precedent In Support of the Revocation of All of the PCI Licenses	12
V. Conclusion	14

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To: Chief Administrative Law Judge  
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**SUMMARY**

1. The Enforcement Bureau ("EB") filed findings in this proceeding on December 24, 2002. While the EB proposes that all of the FCC licenses held by Peninsula Communications, Inc. ("PCI") should be revoked, the record fails to present evidence that this would be an appropriate sanction under the Commission's policies and legal precedent for such an action. The record in this proceeding shows that over the preceding 23 years as an FCC licensee PCI has always been truthful with the Commission in connection with the operation of all of its broadcast stations, including the Wrangell Translators. The record demonstrates that PCI has been a reliable Commission licensee

with no record of prior violations of any Commission rule or policy. Therefore, based on PCI's long record of truthfulness and reliability, it possesses the requisite character qualification to be a Commission licensee and to continue to hold its various broadcast licenses.

The EB has cited no legal precedent in support of its recommendation of license revocation for PCI under the circumstances of this case. No such precedent exists.

Assuming that PCI was guilty of non-compliance with the Termination Order, the sanctions that have been issued against PCI, the termination of the operation of the translators and the \$140,000 forfeiture, are sufficient punishment for any transgressions in the matter over the period in question.

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**REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**OF**  
**PENINSULA COMMUNICATIONS, INC.**

**I. PRELIMINARY STATEMENT**

1. By *Order to Show Cause*, FCC 02-32 (released February 6, 2002) ("OSC"), the Commission commenced a hearing to determine whether the above-captioned commercial broadcast licenses held by Peninsula Communications, Inc. ("PCI") should be revoked based on an administration hearing solely on the following issues:

- (a) To determine the facts and circumstances surrounding Peninsula Communications, Inc.'s operation of former FM translator stations 285EF, Kenai; K283AB, Kenai/Soldotna; K257DB, Anchor Point; K265CK, Kachemak City; K272CN, Homer; and K274AB and K285AA, Kodiak, all in Alaska, subsequent to August 29, 2001, contrary to the Commission's order in *Peninsula Communications, Inc.*, 16 FCC Rcd 11364 (2001) ["Termination Order"], and related violation of Section 416(c) of the Act;<sup>1</sup>
- (b) To determine, in light of the evidence adduced pursuant to issue (a), whether Peninsula Communications, Inc. has the requisite character qualifications to be a Commission licensee and thus whether its captioned broadcast and FM translator licenses, including any former licenses reinstated, should be revoked. (OSC at para. 6).<sup>2</sup>

Pursuant to section 0.111(b) of the Commission's rules, 47 C.F.R. § 0.111(b), the Enforcement Bureau ("EB") was ordered to serve as trial staff in this proceeding, and pursuant to Section 312(d) of the Act, 47 U.S.C. § 312(d), and section 1.91(d) of the Commission's rules, 47 C.F.R. § 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof was placed upon the Commission. (OSC at paras. 8 and 9).

## **II. BACKGROUND**

2. The EB's findings are somewhat confusing in identifying the conduct that is the focus of this proceeding and the licenses that are the subject to regulatory jeopardy. The Commission's Termination Order terminated the licenses for the following PCI FM translator licenses (the "Wrangell Translators"):

K285EF, Kenai, Alaska;  
K283AB, Kenai/Soldotna, Alaska;  
K257DB, Anchor Point, Alaska;  
K265CK, Kachemak City, Alaska;  
K272CN, Homer, Alaska; and  
K274AB and K285AA, Kodiak, Alaska

It is the facts and circumstances surrounding the operation of the Wrangell Translators by PCI

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<sup>1</sup> These shall be referred to as the *Wrangell* FM translators.

subsequent to August 29, 2001, that is the subject of this proceeding. However, PCI is also licensed by the Commission to operate the following broadcast stations:

KGTL(AM), Homer, Alaska;  
KXBA(FM), Nikiski, Alaska;  
KWVV-FM, Homer, Alaska; and  
KPEN-FM, Soldotna, Alaska.  
K292ED (FM translator), Kachemak City, Alaska;  
K285DU (FM translator), Homer, Alaska;  
K285EG and K272DG (FM translators), Seward, Alaska

The EB has presented no evidence that PCI has operated these stations in violation of the licenses issued by the Commission, or otherwise contrary to the Communications Act of 1934, as amended. Indeed, the Commission's OSC does not allege that PCI has acted in any inappropriate manner whatsoever in connection with its operation of these stations.<sup>3</sup>

3. Rather, the record establishes that over the past 23 years of broadcast operation PCI has maintained a clean and compliant record of operation in connection with its ownership of all of PCI's currently licensed stations. (PCI 1 at page 11) PCI has never been cited for any non-compliance with the Commission's rules and regulations, or fined, in connection with the operation of these stations. (PCI 1 at page 11). One can only conclude, therefore, that PCI's long-term operation of these stations has been exemplary, beyond regulatory reproach, and in the public interest. *Black Citizens for a Fair Media v. FCC* 719 F.2d 407, 416 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 3545 (1984), as cited in *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 at footnote 101 (1986), *modified in part* 1 FCC Rcd 421

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<sup>2</sup> This proceeding does not involve any non-FCC related conduct by PCI.

<sup>3</sup> The EB does make a fleeting, and without reference to the record, attempt to disparage PCI's meritorious broadcast operation record with an allegation that PCI operated its two Kodiak FM translators "...in 1997...with an unauthorized satellite delivery system..." EB Findings at page 46, footnote 37. In fact, PCI was granted Special Temporary Authority by the Commission to operate the Kodiak translators with satellite feeds in 1998, not 1997. PCI Exhibits 5 at page 14 and 8 at page 10.

(1986) (hereafter the *Policy*).

4. Thus, the question before the Presiding Officer, and the corresponding burden of proof placed on the EB, is whether PCI's operation of its Wrangell Translators subsequent to August 29, 2001, and while PCI has been actively prosecuting its appeal of the Termination Order before the United States Court of Appeals for the District of Columbia Circuit, demonstrates that PCI lacks the requisite character qualifications to be a Commission licensee of its currently licensed stations, whether those licenses should be revoked even in light of the exemplary record of broadcast operation that PCI has developed in connection therewith, and even though PCI has not taken any action in connection with the operation of those stations contrary to the Commission's rules and regulations and/or the Communications Act of 1934, as amended. The answers based on the record herein, and on Commission policy and precedent, are clearly "no" to these areas of inquiry.

**III. E. B.'S FINDINGS OF FACT**  
**AND**  
**CONCLUSIONS OF LAW**

**A. TRUTHFULNESS.**

5. The EB's findings contain a long, and largely accurate, recitation of the record facts that it chooses to discuss. The EB does not present any findings that would support a conclusion that PCI has lack "truthfulness" in connection with its dealings with the Commission in its continuation of the operation of the Wrangell Translators during the period of August 29, 2001 to August 25, 2002. When the Commission inquired in its *Notice of Apparent Liability for Forfeiture and Order*<sup>4</sup>, whether PCI intended to continue to operate the Wrangell Translators, PCI truthfully and honestly responded in an affidavit from its President, Mr. David Becker, that it intended to do so and

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<sup>4</sup> *Peninsula Communications, Inc.*, 16 FCC Rcd 16124 (2001).



provided a lengthy explanation of its belief that PCI was entitled under the Communications Act of 1934, and the Commission's rules and regulations to continue the operation pending the outcome of its D.C. Circuit appeal. (EB Findings at 36-37). In discussing "PCI's Character Qualifications", the EB notes, correctly, that:

72. In determining whether an entity has the requisite character to be or remain a Commission licensee, the Commission has focused on two traits; truthfulness and reliability. **With respect to the latter**..... [emphasis added] (EB Findings at 43-44).

6. However, the EB's analysis then omits any discussion of the "former" criteria, truthfulness. The reason for this is clear. It is beyond serious dispute that PCI has consistently dealt with the Commission in a truthful and honest manner at all times in connection with the Wrangell Translators. Such a finding is entirely consistent with the previous determination as to PCI's truthfulness by the Commission in its decision *Peninsula Communications, Inc.* 13 FCC Rcd 23992 (1998), wherein it found there was no evidence that PCI had attempted to deceive or mislead the Commission in its operation of the Wrangell FM translator stations. (ON 11 at pages 4-6) Had the EB done an analysis of PCI's truthfulness, the record would only support a finding that PCI has always been entirely truthful with the Commission in its operation of the Wrangell Translators during the period in question, and in the operation of all of its broadcast stations over the period of last 23 years. An objective analysis of PCI's record of truthfulness can only result in a grade of "A".

## **B. RELIABILITY**

7. The EB finds that the Commission ordinarily takes into account an applicant's/licensee's record of compliance with the FCC's rules and policies in determining whether the applicant/licensee can be "trusted" to hold a license and operate in conformity with the Commission's rules and policies. (EB Findings at page 45) However, in this case the EB finds

that PCI's unblemished 23-year record of operation of the stations for which it currently holds licenses should apparently not be taken into account. (EB Findings at page 46) It's rationale for this finding is not clear, particularly in light of the fact that PCI did ultimately terminate the operation of its Wrangell Translators after exhausting its FCC and court remedies in an attempt to stay the termination. At that point, PCI took the action expected of FCC licensees...it complied with the U.S. District Court's enforcement of the Termination Order and ceased operation of the Wrangell Translators. It has continued to remain in compliance with the Termination Order and the court's order since that time, and can be reasonably relied upon to continue to do so in the future in connection with the Wrangell Translators, just as it has been consistently reliable in its operation of the other PCI stations. Contrary to the EB findings, PCI has been entirely reliable as an FCC licensee of its current stations, and of its Wrangell Translators, subject to its beliefs in its appellate rights to continue operation during the pendency of the D.C. Circuit appeal. There is no record evidence to support a conclusion that PCI would not continue to be a reliable and conscientious FCC licensee in connection with the operation of its currently licensed stations and its Wrangell Translators, should these licenses be re-instated.

8. Moreover, the Commission's character *Policy* reaffirmed its view that there should be no presumption that misconduct at one station is necessarily predictive of the operation of the licensee's other stations. Rather, the proper operation of other stations is considered itself evidence of the licensee's capacity to operate broadcast stations in the public interest. *Policy* at 102 FCC 2d 1227-1228. Here, PCI has demonstrated a long and meritorious record of "proper operation" of its currently licensed stations thereby evidencing its capacity to continue to operate in the public interest.

### C. PCI's Character Qualifications to be a Commission Licensee.<sup>5</sup>

9. The EB agrees with PCI that the Commission's policy regarding the character qualifications of its licensees is found in the *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986), *modified in part* 1 FCC Rcd 421 (1986) (the "Policy"). Issues regarding FCC-related misconduct by broadcast licensees are covered in the *Policy*. *Policy* at section 4 "Issues Regarding FCC-Related Misconduct".

10. The EB maintains that because PCI is guilty of "willfully and repeatedly" failing to "...observe and comply with..." the Termination Order, the only question, therefore, is whether PCI should lose the licenses for "one broadcast station or fewer than all stations..." or should lose all of its current licenses. According to the EB, any willful and repeated action by a licensee requires the FCC "death sentence" of license revocation for any and all licenses that it holds. The EB maintains that PCI should be subject to the loss of all of its station licenses, due to its "...intentional defiance of a direct Commission order...." (EB Findings at pages 46-47). It cites no legal precedent for this position. None exists. The EB's position misstates, and is inconsistent with, the Commission's policy in this regard.

11. The Commission's character *Policy* provides that a range on sanctions may be imposed for violations of its rules and policies, and that "only the most egregious case need termination of all rights be considered." *Policy* at 1220. Moreover, the Commission noted in amplifying on how it would look at even willful violations that:

Although we intend to treat any violations of the FCC statutory or regulatory requirements as raising character concerns, not all violations are equally predictive. As discussed more fully *infra*, the nature of the violation, **the circumstances surrounding it and other pertinent considerations** may attenuate or amplify its relevance to

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<sup>5</sup> For the purposes of this discussion, PCI will assume *arguendo* that it was guilty of failing to fully comply with the FCC Termination Order during the period in question.

considerations of future reliability and truthfulness. [emphasis added] *Policy* at footnote 76.

The “circumstances surrounding” PCI’s continuation of the operation of the Wrangell Translators from August 29, 2001 to August 28, 2002 must be considered in determining the predictive nature of the violation, and the appropriate sanction to be imposed. Such a determination cannot be made in a vacuum without consideration of all the factors that were the basis for PCI’s continued operation of the stations. These circumstances were the subject of extensive direct examination and cross examination at the hearing in this proceeding, but are strangely not mentioned by the EB in its findings on PCI’s character qualifications to continue be a licensee. (EB Findings at 43-45). These factors include, *inter alia*,:

a. The United States Court of Appeals for the D. C. Circuit appeal, filed in a timely manner pursuant to Section 405 of the Communications Act, which PCI believes requires the Commission to continue its licenses in effect, and its right to operate its Wrangell Translators, pending the outcome of the appeal under Section 307 of the Act, and FCC policy and precedent under *Pinelands, Inc.*, 7 FCC Rcd 6058 (1992) and associated cases; (EB 27 at pages 2-7)

b. The justifiable fear that if PCI terminated the operation of its Wrangell Translators for a period of 12 consecutive months while its appeal was pending before the D.C. Circuit it would no longer have licenses for either the court or the Commission to reinstate under Section 312(g) of the Communications Act, newly enacted in 1996 and never construed by the Federal Courts to the contrary; (EB 27 at pages 2-7)

c. The fact that the U.S. Court of Appeals for the Ninth Circuit stayed the injunction of the United States District Court for Alaska requiring PCI to cease its operation of the Wrangell Translators and allowed PCI to continue to operate from November 21, 2001 to July 3, 2002; PCI Findings at page 18).

d. The fact that in lifting the stay, the U.S. Court of Appeals for the Ninth Circuit advised PCI that it had to seek a stay of the FCC Termination Order in the D. C. Circuit, which PCI promptly filed in July of 2002. (PCI Findings at page 18)

e. The fact that upon the D.C. Circuit’s refusal to issue the requested stay, PCI terminated the operation of the Wrangell Translators in a timely and orderly manner with the advice and consent of the United States Attorney for Alaska, and continues to leave the Wrangell Translators silent to this date. (PCI Findings at page 18-19)

f. The fact that had PCI terminated the operation of its two (2) Seward, Alaska, FM translators sixty (60) days from the February 14, 2000 date that it was ordered to do so in *Peninsula Communications, Inc.*, FCC 00-45 (released February 14, 2000), it would not have had licenses for these two Seward translators for the Commission to reinstate on May 18, 2001, as it did, in the *Memorandum Opinion And Order And Order To Show Cause*, FCC 01-159 (released May 18, 2001) when the Commission tacitly admitted its action in ordering the termination was unlawful, since the reinstatement *Order* was not made within twelve (12) months after the termination of operation date for the Seward translators. PCI did not want this possibility repeated with regard to all of its Wrangell Translators, particularly inasmuch as it knew the D.C. Circuit would, as it has, take more than 12 months to process its appeal; (TR 428)

g. The fact that PC's principals truly and passionately believe that PCI's position before the D.C. Circuit will be vindicated pursuant to its appeal, and that the Commission's Termination Order unfairly, unnecessarily, and illegally put PCI in the position of having only a "Hobson's Choice"<sup>6</sup> of either obeying the order to terminate and sacrificing its appeal rights, or continuing to operate in contravention of the Commission's Termination Order pending the outcome of its appeal. Neither PCI nor any other licensee should be put in that position again.

12. As noted previously, the Commission has generally reserved "the ultimate sanction of removal of all licensee rights...for cases of egregious misconduct evincing a pervasive unwillingness or inability to meet the basic responsibilities of a licensee" *Policy* at 102 FCC 2d 1210-11, 1224 (emphasis added). There is nothing "pervasive" about PCI's conduct, which is, at worst, an isolated and anomalous situation that is entirely inconsistent with PCI's exemplary broadcast record over the preceding 23 years. Moreover, this is not an egregious case warranting the revocation of all of PCI's remaining licenses under this standard, and taking into consideration all of the facts and circumstances surrounding PCI's continued operation of the Wrangell Translators during the limited period in question. PCI has at most been guilty of failing to obey a single Commission order to terminate the operations of its Wrangell Translators while it believed in good faith that it had a statutory right to continue that operation, and vigorously pursued in good faith various appellate court actions, successfully in the case of the

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<sup>6</sup> Thomas Hobson was a 17<sup>th</sup> century stable owner in London, England who gave persons who wanted to lease a horse the option of taking whatever horse was closest to the stable door, or not taking any horse at all.

9th Circuit stay of the U.S. District Court preliminary injunction, in defense thereof. Whether PCI was right or wrong in that belief, it was heartfelt and the result of both years of study on the interaction of various provisions of the Communications Act (TR 155,) by its principals, and of agonizing with conscience on the part of PCI President Mr. Dave Becker in spite of his deep felt belief that his position was true. (TR 224)<sup>7</sup> Nothing in the record of this isolated occurrence under very unusual circumstances supports a finding that Mr. Becker and/or PCI is guilty of a pervasive unwillingness or inability to meet the basic responsibilities of a Commission licensee, nor would indicate the need to revoke any of the PCI licenses.

#### **D. PCI'S "WILLFULNESS"**

13. The EB indicates that the Commission's assessment of whether a licensee possesses the requisite character to remain a licensee "...is derived from an entity's demonstrated willingness or unwillingness to comply with the law generally and the Communications Act and the Commission's rules in particular. *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179m 1189-91 (1986)." (EB Findings at page 43). Moreover, the EB indicates that license revocation is appropriate under Section 312(a) of the Communications Act "... (4) for willful or repeated violation of, or willful or repeated failure to observe any provisions of this Act, or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States." (EV Findings at page 44). The EB argues that "...PCI has willfully and repeatedly violated Section 301 of the Act by knowingly operating seven

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<sup>7</sup> The EB gratuitously accuses PCI of showing "no remorse." EB Findings at page 47. PCI's President and chief of operations, Mr. Dave Becker, reiterated that he deeply regretted being at odds with the FCC on this issue, but was left with no other choice in the case at hand if PCI were to be able to prosecute its Federal court appeal and have licenses that could be reinstated in the event the D.C. Circuit agreed with PCI in the case. Had PCI terminated the operation of the Wrangell Translators when ordered to do so by the FCC, its licenses for the translators would have expired in May of 2002 under Section 312(g) of the Communications Act of 1934, as

unlicensed translators for more than a year after the Termination Order...and “...willfully and repeatedly violated Section 416(c) of the Act by knowingly failing to observe and comply with a Commission order...” to cease such operation. (EB Findings at page 45) Fundamental to their argument of PCI violations in these regards is the question of whether the PCI action in continuing the operation of the Wrangell Translators after the release of the Termination Order was indeed “willful.” It was not.

Willful is defined by Webster's Revised Unabridged Dictionary (1913) as follows:

Willful \Will"ful/, a. [Will + full.] [Written also wilful.]

1. Of set purpose; self-determined; voluntary; as, willful murder. --Foxye. [emphasis added].

As noted previously herein, and in the PCI Findings, PCI had no choice but to continue the operation of its Wrangell Translators following the effective date of the Termination Order in order to pursue its statutory right to seek review of the order by the D.C. Circuit pursuant to 47 U.S.C. 405. Had PCI terminated its operation of the Wrangell Translators in May of 2001, or even on August 29, 2001, its appeal would now be moot since the translators would have failed to operate for a period of twelve (12) consecutive months, and the licenses would have immediately terminated under 47 U.S.C. 312(g) without any ability of either the Commission or the D.C. Circuit to reinstate them. PCI's continued operation of the Wrangell Translators was hardly “voluntary”, but was absolutely necessary for it to effectively and fully prosecute its appeal of the Termination Order under 47 U.S.C. 405, which is its statutory right. PCI's actions were not “willful” in that they were not voluntary, but involuntarily necessary for it to pursue its appeal in the D.C. Circuit.

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amended in 1996.

#### **IV. FCC LEGAL PRECEDENT IN SUPPORT OF THE REVOCATION OF ALL OF THE PCI LICENSES.**

14. The EB cites no legal precedent factually on point, or even remotely related to, the present case that supports the revocation of any or all of PCI's current licenses. In *KQED, Inc.*, 5 FCC Rcd 1784 (1990), KQED committed serious misconduct by lacking candor about and misrepresenting the reasons for deactivation of KQEC(TV), a station it was licensed to operate. Stated differently, KQED lied to the Commission about its operation of KQEC(TV). There is no evidence in the record of this proceeding that PCI has been guilty of lacking candor or misrepresenting anything in connection with its operation of the Wrangell Translators. Similarly, in *James A. Kay, Jr.*, 17 FCC Rcd 1834 (2002), Mr. Kay failed to respond to Commission inquiries and filed a pleading that lacked candor. PCI is guilty of neither action.

15. As to situations where the Commission has revoked all of a licensee's licenses, in *Contemporary Media, Inc.*, 13 FCC Rcd 14437 (1998), broadcast licenses were revoked where the licensee's the principal owner had been found criminally guilty of non-broadcast related felonies involving violations of laws relating to repeated sexual abuse of children, and in making serious misrepresentations to the Commission in connection with those convictions. PCI has certainly not been guilty of any such offenses. While the *Star Stations of Indiana, Inc.* case, 51 FCC 2d 95 (1975), did not involve the commission of heinous felonies by the major principal in the licensee, a Mr. Burden, the Commission did find:

Based on the record before us, we have concluded that Burden was intimately involved in and had knowledge of a range of misconduct including improper campaign contributions, slanted news broadcasts, and misrepresentations to the Commission. In addition, the evidence reflects attempts to frustrate the Commission's processes by intimidating and harassing employees and former employees of Star. We have found that the record demonstrates a reprehensible course of misconduct involving the basic character qualifications of Burden and Star, clearly warranting their disqualification from operating these broadcast facilities. In view of such pervasive misconduct, we have concluded that



the public interest, convenience and necessity could not be served by the grant of Star's renewal applications. (emphasis added)

There is no correlation between the facts involving PCI and Mr. Burden that would suggest that *Star Stations* has any relevance whatsoever to this proceeding, or to the ultimate penalty of license revocation for PCI suggested by the EB.

16. Finally, the EB suggests that the *Leslie D. Brewer*, 16 FCC Rcd 12878 (Enforcement Bureau 2001) staff decision to revoke certain Amateur Radio and General Mobile Radio Station licenses supports the revocation of all of the PCI broadcast licenses. However, *Brewer* involved a "pirate operator" who was found guilty of operating an FM broadcast station, which he had never sought, much less been granted, an FCC license to operate. The FCC caught Mr. Brewer on twelve separate and distinct occasions<sup>8</sup> illegally operating his pirate FM station. Each time he was caught, Mr. Brewer promised to never operate the station again, even after the Commission confiscated the equipment he had previously used for the operation of the station. He was deemed guilty or reckless and wanton misrepresentations to the Commission, factors that are not present in the record relative to PCI. In summary, none of the legal precedent proffered by the EB supports its ultimate conclusion that any, much less all, of the PCI licenses should be revoked. In fact, license revocation has never been deemed warranted by the Commission where there was not some evidence of fraud or misrepresentation on the part of the licensee in its relationship and dealings with the Commission. C.f. *Herbert L. Schoenbohm*, 13 FCC Rcd 15028 (1998), *recon. denied*, 13 FCC Rcd 23774 (1998), *aff'd* 204 F. 3d 243 (D.C. Cir. 2000); *Pass Word, Inc. v. F. C. C.*, 673 F.2d 1363, 1364, 218 U.S.App.D.C. 181, 181 (D.C.Cir. 1982) and

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<sup>8</sup> The evidence established that Mr. Brewer operated unlicensed broadcast and/or STL facilities on at least the following dates: January 11, 1996; February 16, 1996; October 25, 1996; January 31, 1997; May 15, 1997; October 14, 1997; November 19 and 23, 1997; December 3, 10, and 15, 1997; and March 11, 2000.

*KWK Radio, Inc. v. F. C. C.*, 337 F.2d 540, 540, 119 U.S.App.D.C. 144, 144 (D.C.Cir. 1964).

There is no record evidence of any fraud or misrepresentation on the part of PCI in its dealings over the course of 23 years with the Commission, and license revocation is clearly not warranted under the circumstances at hand in this proceeding.

## **V. CONCLUSION**

17. PCI may have been unwillingly forced to continue the operation of its Wrangell Translators in order to protect its rights to fully prosecute its appeal of the Termination Order, or may have done so in the belief that it was entitled to continuation of operation as a license renewal applicant under the Communications Act while its appeal was pending. However, PCI did so only after sober reflection and based on earnest conviction on the part of its principals, and never misrepresented any facts to the Commission in connection with the continuation of operation. It has been penalized through the loss of the licenses for the Wrangell Translators, the termination of the operation of the translators, and a \$140,000 forfeiture. As noted in the PCI Findings, "...that should be the end of it." *Swan Creek Communications v. F.C.C.*, 39 F. 3d 1217 (1994).

Peninsula Communications, Inc.

By: 

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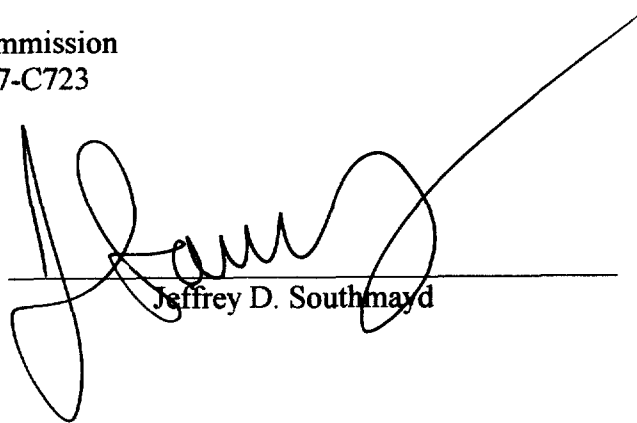
January 23, 2003

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent by first class United States mail, postage pre-paid, and email on this 23<sup>rd</sup> day of January, 2003, to the following:

Chief Administrative Law Judge Richard L. Sippel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-C749  
Washington, D.C. 20554

Mr. James Shook  
Investigations & Hearings Division  
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